



ANALYSIS

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1968, No. 60

An Act to amend the Matrimonial Proceedings Act 1963

[12 December 1968]

BE IT ENACTED by the General Assembly of New Zealand, in Parliament assembled, and by the authority of the same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Matrimonial Proceedings Amendment Act 1968, and shall be read together with and deemed part of the Matrimonial Proceedings Act 1963 (hereinafter referred to as the principal Act).

(2) Section 8 of this Act shall come into force on the first day of January, nineteen hundred and sixty-nine.

(3) Except as provided in subsection (2) of this section, this Act shall come into force on the date of its passing.

2. Grounds for divorce—Section 21 of the principal Act is hereby amended—

(a) By omitting from paragraph (c) of subsection (1) the words “three years”, and substituting the words “two years”:

- (b) By omitting from paragraph (d) of subsection (1) the words "three years", and substituting the words "two years":
- (c) By omitting from subparagraph (i) of paragraph (e) of subsection (1) the words "three years", and substituting the words "two years":
- (d) By omitting from paragraph (m) of subsection (1) the words "three years", and substituting the words "two years":
- (e) By omitting from subparagraph (ii) of paragraph (n) of subsection (1) the words "three years", and substituting the words "two years":
- (f) By omitting from paragraph (o) of subsection (1) the words "seven years", and substituting the words "four years".

3. Effect of resumption of cohabitation—(1) Section 26 of the principal Act is hereby amended—

- (a) By inserting in subsection (1), after the words "agreement to separate", the words "or the parties to the marriage are living apart":
- (b) By inserting in subsection (1), after the words "full force", the words "or the parties shall not be deemed to have ceased to live apart":
- (c) By omitting from subsection (1) the words "two months", and substituting the words "three months":
- (d) By inserting in subsection (2), after the word "separation", the words "or living apart".

(2) Section 29 of the principal Act is hereby amended by omitting from subsection (5) the words "two months", and substituting the words "three months".

(3) Section 34 of the principal Act is hereby amended by omitting from subsection (2) the words "two months", and substituting the words "three months".

4. Variation of maintenance orders—(1) Section 47 of the principal Act is hereby amended by omitting from subsection (2) the words "or otherwise", and substituting the words "or by remitting in whole or in part any arrears due under the order, or by discharging the order and substituting in its place a new order, whether of the same kind or not, or otherwise".

(2) Section 52 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) The power conferred on the Court by subsection (2) of this section to vary any order under subsection (1) of this section shall include power to remit in whole or in part any arrears due under the order and to cancel the order and make in its place a new order under subsection (1) of this section, whether of the same kind or not.”

5. Arrangements for welfare of children—Section 49 of the principal Act is hereby amended by adding, as subsection (2), the following subsection:

“(2) No final decree of dissolution of a voidable marriage or divorce shall be invalid solely on the ground that the provisions of subsection (1) of this section were not complied with, or that any information relevant for the purposes of that subsection was not supplied to the Court, or that any information supplied to the Court for the purposes of that subsection was incomplete, incorrect, or misleading, or that any undertaking under the proviso to paragraph (c) of that subsection has not been carried out.”

6. Rights of mortgagee, etc.—Section 56 of the principal Act is hereby amended by omitting the words “before the date of the making of the order or if the rights of that person arise under an instrument executed before that date”, and substituting the words “before the order was registered or if the rights of that person arise under an instrument executed before the date of the making of the order”.

7. Vesting of tenancy of dwellinghouse—Section 60 of the principal Act is hereby amended—

(a) By inserting in subsection (4), after the words “other party”, the words “or of the personal representative of the other party”:

(b) By inserting in subsection (4), after the words “before the making of that order”, the words “or, as the case may be, the personal representative of that person or of any of those persons”.

8. Limitation of time for certain proceedings in respect of matrimonial home—(1) The principal Act is hereby further amended by inserting, after section 62, the following section:

“62A. Every application under subsection (1) of section 57 or subsection (1) of section 62 of this Act for an order against the personal representative of a husband or wife shall be made before the expiration of twelve months after the date

of the grant in New Zealand of administration in his or her estate:

“Provided that—

“(a) The Court may extend the time for making an application, after hearing the applicant and such other persons having an interest in the property that would be affected by the order as the Court thinks necessary; and this power shall extend to cases where the time for applying has already expired, including cases where it expired before the commencement of this section:

“(b) No distribution of any part of the estate made before the personal representative receives notice that the application for extension has been made to the Court, and after notice (if any) of an intention to make an application has lapsed in accordance with subsection (6) of section 30A of the Administration Act 1952 (as applied to applications under subsection (1) of section 57 or subsection (1) of section 62 of this Act by section 8 (2) of the Matrimonial Proceedings Amendment Act 1968), shall be disturbed by reason of that application or of any order thereon, and no action shall lie against the personal representative by reason of his having made any such distribution.”

(2) Section 30A of the Administration Act 1952 (as inserted by section 2 of the Administration Amendment Act 1960 and amended by section 89 (2) of the principal Act) is hereby further amended by omitting from subsection (1) the words “or under section 40 or section 41 or subsection (2) of section 47 of the Matrimonial Proceedings Act 1963”, and substituting the words “or under subsection (3) of section 12 or section 40 or section 41 or subsection (2) of section 47 or subsection (1) of section 57 or subsection (1) of section 62 of the Matrimonial Proceedings Act 1963”.

(3) Section 89 of the principal Act is hereby consequentially amended by repealing subsection (2).

9. Recovery of money from estate of deceased party—

(1) Section 76 of the principal Act is hereby amended by inserting, after the words “the time of his death”, the words “and any capital sum or any instalments of any capital sum payable after the date of his death pursuant to any order made against the deceased under subsection (2) of section 41 or subsection (3) of section 44 or paragraph (b) of subsection (1) of section 58 of this Act”.

(2) Section 76 of the principal Act is hereby further amended by adding, as subsections (2) to (5), the following subsections:

“(2) Where—

“(a) By any order made under section 40 or section 52 of this Act, whether before or after the commencement of this subsection, a personal representative is liable to pay any periodical sum in respect of any period after the death of the deceased; or

“(b) An order is made under section 41 of this Act, whether before or after the commencement of this subsection, against the personal representative of a deceased husband for the payment of a capital sum, whether in one amount or by instalments,—the amount so payable by the personal representative under the order, or, where there are two or more such orders, under all those orders, shall constitute a debt recoverable out of the estate of the deceased, but all other debts payable out of the estate shall rank in priority thereto. For the purposes of this subsection, an order made under subsection (2) of section 47 of this Act varying or extending any order under section 40 or section 41 of this Act shall be deemed to be an order under the said section 40 or section 41, as the case may be.

“(3) Nothing in subsection (2) of this section shall affect any security given, pursuant to an order under this Act, for the payment of any periodical or capital sum or the rights of any person in respect of that security.

“(4) Where the estate of the deceased is insufficient for the payment in full of the amounts so payable under two or more orders to which subsection (2) of this section applies, so much of the estate as is available for payment of those amounts shall be applied in payment rateably of the amounts so payable under the several orders.

“(5) Nothing in this section shall restrict the power of the Court to make in respect of any order to which this section applies an order under section 47 of this Act after the death of the person liable under the first-mentioned order.”

(3) Nothing in this section shall invalidate any payment made or any act or thing done in good faith before the passing of this Act by the personal representative of a deceased husband or wife.

10. Incidence of payments due by estate of deceased party—(1) The principal Act is hereby further amended by inserting, after section 76, the following section:

“76A. (1) The incidence of the payments under any order to which subsection (2) of section 76 of this Act applies shall fall upon the assets of the estate of the deceased as follows:

“(a) Where the will of the deceased contains directions relating specifically to the incidence of those payments, the incidence of the payments shall fall upon the assets of the estate in accordance with the directions of the will:

“(b) Subject to any such directions in the will of the deceased, the incidence of the payments shall fall upon the assets of the estate in the same manner as would the incidence of the unsecured debts of the deceased:

“Provided that the incidence of any such payments in respect of which security has been ordered to be given under this Act shall fall primarily on the assets of the estate over which security has been ordered to be given.

“(2) Notwithstanding anything in subsection (1) of this section or in the will of the deceased, but subject to subsections (2) to (5) of section 76 of this Act, the Court shall have power at any time—

“(a) To fix or vary as between the assets of the estate of the deceased, in such manner as it thinks fit, the incidence of the payments under any order to which subsection (2) of section 76 of this Act applies:

“(b) To exonerate any part of the estate, in whole or in part, from the incidence of the payments under any such order:

“(c) To adjust the burden of the payments under any such order among the persons who are or may be beneficially interested in the estate of the deceased in such other manner as the Court thinks fit.

“(3) The Court may from time to time vary any order made under subsection (2) of this section in such manner as it thinks fit.

“(4) Any order under subsection (2) or subsection (3) of this section, or any provision of any such order, may be made upon and subject to such terms and conditions as the Court thinks fit.

“(5) Application for an order under subsection (2) or subsection (3) of this section may be made by the personal representative of the deceased or by any person interested in the distribution of the estate or by the person entitled to the benefit of the order to which subsection (2) of section 76 of this Act applies.

“(6) Before making any such order, the Court shall hear such of the persons who may be affected by the order as it thinks necessary, and may for that purpose direct any personal representative to represent, or appoint any person to represent, any such person.

“(7) No distribution of any part of the estate lawfully made before the personal representative receives notice that an application for such an order has been made to the Court shall be disturbed by reason of the application or of any order thereon, and no action shall lie against the personal representative by reason of his having made any such a distribution.”

(2) Nothing in this section shall invalidate any payment made or any act or thing done in good faith before the passing of this Act by the personal representative of a deceased husband or wife.

11. Orders as to settled property, etc.—Section 79 of the principal Act is hereby amended by inserting, after subsection (1), the following subsection:

“(1A) Where a decree of nullity or of separation or of dissolution of a voidable marriage or of divorce has been made and the parties have entered into an agreement for the payment of maintenance, the Court may at any time, on the application of either party or of the personal representative of the party liable for the payments under the agreement, cancel or vary the agreement or remit any arrears due under the agreement.”

12. Recognition of overseas decrees—Section 82 of the principal Act is hereby amended by inserting in subsection (1), after the words “Court or legislature” wherever they occur, the words “or public authority”.

This Act is administered in the Department of Justice.
